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OFFICE OF PETITIONS

Mark K. Johnson
Mirus Corporation
505 S. Rosa Rd.
Madison WI 53719

In re Application of	:	
Hagstom, et al.	:	
Application No. 10/733,706	:	DECISION
Filed: 11 December, 2003	:	ON PETITION
Attorney Docket No.: Mirus.048.01	:	

This is a decision on the petition under 37 C.F.R. §1.78(a)(3), filed 29 December 2005, to accept an unintentionally delayed claim under 35 U.S.C. §120 and §119(e) for the benefit of priority to prior-filed applications.

The petition is **DISMISSED**.

A petition for acceptance of a claim for late priority under 37 C.F.R. §1.78(a)(3) and §1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 C.F.R. §1.78(a)(2)(ii) and §1.78(a)(5)(ii). In addition, the petition under 37 C.F.R. §1.78(a)(3) and §1.78(a)(6) must be accompanied by:

- (1) the reference required by 35 U.S.C. §120 and §119(e) and 37 C.F.R. §1.78(a)(2)(i) and §1.78(a)(5)(i) of the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in 37 C.F.R. §1.17(t);¹ and
- (3) a statement that the entire delay between the date the claim was due under 37 C.F.R. §1.78(a)(2)(ii) and §1.78(a)(5)(ii) and the date the claim was filed was

¹ The scheduled fee is not \$130.00. As of this writing, the scheduled fee is \$1,370.00. However, Petitioner always should consult the Office website for the current fee schedule before submitting any materials on petition.

Application No. 10/733,706

unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

The petition fails to comply with items (1) and (2) above.

The amendment as drafted is unacceptable and, therefore, is not considered a proper reference under 37 C.F.R. §1.78(a)(2)(i) and under 37 C.F.R. §1.78(a)(5)(i). In this regard, the amendment is physically part of the petition and, as such, does not comply with under 37 C.F.R. §1.121, §1.52, or §1.4(c). Note that the regulations at 37 C.F.R. §1.121 state that an amendment is made by filing a paper, in compliance with §1.52, directing that a specified amendment be made. The pertinent section of 37 C.F.R. §1.52 states that the claim (in this case, that for priority), must commence on a separate physical sheet. The regulations at 37 C.F.R. §1.4(c) state that each distinct subject must be contained in a separate paper since different matters may be considered by different branches of the Office.

Accordingly, before the petition under 37 C.F.R. §1.78(a)(3) and 1.78(a)(6) can be granted, a renewed petition under 37 C.F.R. §1.78(a)(3) and §1.78(a)(6) and either a proper amendment² or an ADS is required.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
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By hand: Customer Service Window
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 401 Dulany Street
 Alexandria, VA 22314

² Note 37 C.F.R. §1.121

Application No. 10/733,706

Inquiries concerning this decision may be directed to John Gillon, Senior Attorney, Office of Petitions at (571) 272-3214.

A handwritten signature in cursive script, reading "Frances Hicks". The signature is written in black ink and is positioned above the printed name.

Frances Hicks
Petitions Examiner
Office of Petitions